(1)

Supreme Court, U.S.

No. 01-21 APR 30 2001

OFFICE OF THE CLERK

In The

Supreme Court of the United States

Edgar F. Bennett,
Petitioner,

v.

Beatrice M. Bennett,
Respondent.

On Petitition for Writ of Certiorari to the Second District Appellate Court, Illinois

PETITION FOR A WRIT OF CERTIORARI

Beatrice M. Bennett,
Pro Se
913 Clyde Drive
Downers Grove 60516
630/969-5974

33 pp

QUESTIONS PRESENTED

1. Whether the court violated ERISA and IRS Codes protecting spousal rights to retirement funds, ruling these codes do not apply when the QDRO is entered after a bifurcated dissolution, as the parties are longer spouses.

2. Whether the court violated Article I,10 of United States Constitution, ruling that attorneys cannot be held to contractual obligation in fee petitions brought under 750 ILCS 5/508, Illinois Marriage and Dissolution of Marriage Act,

3. Conclusion

AUTHORITIES

The following codes and authorities are applied:

ERISA, 29 USC 18(a): Each pension plan to which this section applies shall provide that-- (1) in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant shall be provided in the form of a qualified joint and survivor annuity.

ERISA, 29 USC 18(c)(2): Each plan shall provide that an election under paragraph (1)(a)(i) shall not take effect unless--(A)

(i) the spouse of the participant consents in writing to such election,

(ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and

(iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public.

ERISA, 29 USC 18(d): For purposes of this section, the term "qualified joint and survivor annuity" means an annuity --

(1) for the life of the participant with a survivor of the spouse which is not less than 50 percent of the annuity which is payable during the joint lives of the participant and the spouse, and

(2) which is the actuarial of a single annuity for the life of the participant.

29 USC 18 1056(3)(F): To the extent provided in any qualified domestic relations order –

(i) former spouse of a participant shall be treated as the surviving spouse of such participant for purposes of Section 1055 of this title.

IRC, 26 USC at 417(a)(A)(i): Election shall not take effect unless --

(A)(ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent ---, and

(iii) spouse's consent acknowledges effect of such election and is witnessed by plan representative or a notary public, or

(B) it is established -- that the consent required under subparagraph(A) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as the Secretary may by regulations prescribe.

U.S. Constitution, Article I, at 10,
"No state shall pass any law impairing the obligation of contracts."

Illinois Constitution, Article I at 16,
"No law shall be passed impairing the obligation of contracts."

750 ILCS 5/508, Illinois Marriage & Dissolution of Marriage Act, Client's Rights & Responsibilities:

> "6. DISPUTES: The counsel-client relationship is regulated by the Illinois Rules of Professional Conduct (Article VIII of the Illinois Supreme Court Rules) and any dispute shall be reviewed under the terms of such Rules."

Kaufman, Litwin & Feinstein v. Jim Edgar, Governor of Illinois, Jim Ryan, Attorney General of Illinois, Defendants-Appellees, John S. Elson, Intervenor-Defendant and Cross-Plaintiff-Appellee, 30 Ill.App.3d, 826, 235, Ill.Dec.83, No. 1-997-2455 (Ill.App.1,2) Dec 1, 1998, IRMO Self, 265 Ill.App.3d 804, 202 Ill. Dec. 831, 638 N.E. 2d 699

Fox Valley v. Brown, 97 F.2d 275, 280-82 (7th Cir. 1990)

Anderson v Marshall, D. Kan 1994, 856 F. Supp.604,

PETITION FOR A WRIT OF CERTIORARI

Petitioner Beatrice M. Bennett prays that a writ of certiorari will issue to review the judgment entered on two appeals, combined on the appellate court's own motion, which denied her as beneficiary on the marital retirement fund as well as her right to use contractual obligation to defend a fee petition.

PARTIES TO PROCEEDINGS

Besides the captioned parties, Randy K. Johnson and Robert A. Chapski, Ltd., are added as judgment-creditors.

CITED ORDERS

Qualified Domestic Relations Order entered Jun 15, 1999 on marital retirement funds is App. A-. The unpublished order of Illinois Appellate Court of Second District on the combined appeals is App. A-; their order denying Petition for Rehearing is App. A-; and Illinois Supreme Court denial of leave to appeal is App. A-. Also given are pertinent parts of trial transcripts, App. A-.

JURISDICTION

Judgment on combined appeals was entered Sep 22, 2000 and the Illinois Supreme court denied leave to appeal on Jan 29, 2001. A timely Petition for Writ of Certiorari was mailed Apr 30, 2001, with corrections due within 60 days of May 3, 2001.

Jurisdiction of this court is invoked under U.S. Rules 10(b),(c) and 29 U.S.C. at 1451(c)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

See AUTHORITIES, page 2.

STATEMENT OF THE CASE

Involved are two appeals, combined by the reviewing court for judgment, one on a QDRO entered after the dissolution judgment was signed in a bifurcated trial and the other on an award of fees with the court refusing to hear contractual obligation.

Beatrice and Edgar were married in Aug 1970; Edgar retired in Feb 1997; On Mar 1, 1997, he irrevocably sold employment retirement funds invested in TIAA and elected a Joint-Life 2/3rds-Benefit-to-Survivor annuity, naming Beatrice the Beneficiary to satisfy requirements for election without spousal consent. Four days later, on Mar 5, 1997, Edgar filed for divorce. On Jun 11, 1998, Beatrice hired Johnson to represent her, which the court denied and she was at trial. Judgment was signed Jul 17, 1998, awarding property while reserving the QDRO. On Aug 6 / 8, 1998, Beatrice hired Johnson for post-judgment issues, including appeal of the dissolution itself. On Jan 27, 1999, she fired Johnson in open court for "fraud and concealment" and filed her own appellate reply brief. Beatrice was again pro se for Johnson's fee trial, Jun 2 to Jul 6, 1999. On Jun 15, 1999, the same court denied her time to respond to a drafted QDRO, which was entered that date over her objections that it did not comply with ERISA. On Jul 6, 1999, Johnson was awarded fees, with the court ruling that contractual obligation did not apply in Family Law fees. These judgments were affirmed on appeal and Illinois Supreme Court denied review. [see Appendix.]

REASONS FOR GRANTING THE WRIT

1. THE COURT VIOLATED ARTICLE I, SECTION 10 OF THE UNITED STATES CONSTITUTION WHEN IT RULED THAT UNDER 750 ILCS 5/508, ILLINOIS MARRIAGE AND DISSOLUTION OF MARIAGE ACT, CONTRACTUAL OBLIGATION DOES NOT APPLY TO FEE PETITIONS

Beatrice contends that the court's interpretation that contractual obligation does not exist in Illinois Family Law fees is against Article I,10, U.S. Constitution and Article I,16, Illinois Constitution, 1970, mandates that no law shall be passed impairing the obligation of contracts. The use of the word "shall" leaves no room for discretion. [IRMO Self, 265 Ill.App.3d 804, 202 Ill. Dec. 831, 638 N.E.2d 699 (1994)] Beatrice believes the court was without discretion to eliminate Randy Johnson's contractual obligation to Beatrice when awarding attorney fees and that judgment should be overturned.

On Aug 6/8, 1998, Beatrice and Johnson signed a contract for post-judgment legal work; on Jan 27, 1999, she fired him in open court:

> "in the firm belief that Johnson used fraud and concealment to cause irreparable harm to both my circuit and appellate court cases. I believe that (he) has acted intentionally to deceive me on material facts when, as my counsel, he had the duty and opportunity to speak. I do not trust him." [C.928]

In Johnson's fee petition trial, the court refused to let Beatrice use contractual obligation as a defense, although the contract she signed with Johnson included a state-mandated rider, Client's Rights and Responsibilities, which states:

> "6. DISPUTES: The counsel-client relationship is regulated by the Illinois Rules of Professional Conduct (Article VIII of the Illinois Supreme Court Rules) and any dispute shall be reviewed under the terms of such Rules."

The court held, "Whether you two had a valid contract is not at issue; whether you breached a contract is not at issue; what is at issue is the legislative enactment allowing for collection of attorney fees in divorce cases."[App. A-20]

It refused Beatrice's attempts to establish work Johnson was retained to do, if he did it, or if Beatrice benefited, while accepting into evidence the appellate brief prepared by Johnson, Edgar's response brief, and denied as evidence Beatrice's pro se appellate Reply and Argument brief due after Johnson was fired. The court awarded Johnson more than three times the amount of the contract. Beatrice appealed.

Although unpublished Rule 23 orders must address all issues presented for review, the appellate court ignored Beatrice's issue of constitutional contractual obligation as well as her authority, Kaufman, et al v. Jim Edgar, Governor, et al, which established that obligation does exist between clients and lawyers in 5/508 Family Law fee petitions. Beatrice believes the failure of courts to allow her defense is plain error affecting substantial

rights to protect her property and resulted in a miscarriage of justice.

She prays that this Court will issue a writ to review the constitutional interpretation in this case, resulting in Johnson having no obligation to his client while Beatrice was obligated to pay his fees, a double standard.

1. THE LOWER COURT ORDER CONFLICTS WITH FEDERAL ERISA AND IRS CODES ON SPOUSAL RIGHTS, RULING THAT WHEN THE QDRO IS ENTERED AFTER A BIFURCATED DISSOLUTION, THE CODE DOES NOT APPLY AS THE PARTIES ARE NO LONGER SPOUSES

In conflict with Employee Retirement Income Security Act, ERISA, 29 USC 18,1055(c)(2), a Qualified Domestic Relations Order, QDRO, was entered affecting Beatrice's rights on this marital asset.

On Mar 1, 1997, four days before filing for divorce on Mar 5, Edgar, sold their TIAA retirement fund and elected an irrevocable Joint-Life 2/3rds Benefit-to-Survivor annuity, naming Beatrice the beneficiary. ERISA 29 USC 18,1055(c)(2) (A)(i) states:

> "such election cannot take effect unless the spouse consents in writing, (ii) the election designates a beneficiary which may not be changed without spousal consent, and (iii) spouse's consent acknowledges the effect of such election and is witnessed by the Plan administrator or notarized."

Beatrice knew nothing of Edgar's election.

A bifurcated divorce was entered July 17, 1998 and when the QDRO was entered Jun 15, 1999, Edgar changed his beneficiary. Although Beatrice argued this was against ERISA regulations at the QDRO hearing, the court ruled Edgar was "free to change beneficiaries, he did go through a divorce," [Tr. Trans. A-20] an interpretation upheld by the appellate court:

> "Beatrice was no longer Edgar's spouse and thus, under the terms of the Code, he did not need (her) consent to change beneficiaries." [App. A-20].

A divorce decree does not affect the pension rights of a person who has been designated as beneficiary unless the decree specifically includes terminating those rights. Fox Valley v. Brown. Beatrice's rights were not terminated in the Bennett decree. Further, under ERISA 29 USC 18,1055(c)(2)(A)(i), Edgar was required to get Beatrice's notarized consent to change his beneficiary. Again, this was not done.

In Anderson v Marshall, D. Kan 1994, 856 F. Supp.604, ex-husband was not entitled to revoke his former wife as beneficiary when divorce decree was filed after former husband retired. Using this authority, Edgar was not allowed to revoke Beatrice as his beneficiary as he retired before he filed for divorce Mar 5,1997.

Under ERISA, spouses are an integral part of qualified retirement plans, including former spouses. The former spouse of a participant shall be treated as the surviving spouse of such participant

for purposes of Section 1055 of this title. 29 USC 18,1056(3)(F).

The irrevocable Joint-Life Two-Thirds Benefit-to-Survivor annuity Edgar elected provided that upon the death of either party, the annuity is reduced to 2/3rds and the entire reduced monthly sum shall continue for the life of the survivor. [App. A-1] As beneficiary, Beatrice's monthly income of 35.4565% of the full benefit would increase to 100% of the 2/3rds benefit, but, by revoking her as beneficiary, her income will decrease to 35.4565% of the 2/3rds benefit. This fails to meet the 50% minimum requirement of a qualified joint and survivor annuity under ERISA, 29 USC, 18(d).

The appellate court stated Beatrice had full opportunity to be heard, although the record shows the trial court refused Beatrice time to respond in writing to a proposed QDRO received just four days earlier and time to call TIAA to testify on the complex, technical annuity and QDRO drafted by Edgar. Beatrice testified TIAA had not approved the QDRO, as Edgar alleged. [Tr. trans., 6/15/99, App.] Additionally, Edgar did not subpoena any TIAA-CREF employees to testify. The Court should have stricken his comments attributed to them as hearsay. She could not question why TIAA, the Plan Administrator well acquainted with ERISA rules on separate QDRO benefits, was unwilling to "issue checks to any other payee than Annuitant." [QDRO, Para. G. App. A-1] Further, Beatrice could not question Edgar on his failure to obtain her notarized consent before changing his annuity beneficiary, as required by ERISA; instead, the QDRO prepared by Edgar alleged that "the

parties" agreed the Court should declare the Immediate Annuity Contract to be "fair and equitable under the Circumstances." [QDRO Para. G, App. A-1] Beatrice was not a party to such an agreement.

The court failed to determine if Edgar had elected the most favorable annuity for Beatrice when his irrevocable choice precluded her spousal option for a lumpsum payout, nor did the court calculate the amount of annuity benefits Edgar alone enjoyed from Mar 1, 1997 to the entry of the QDRO on Jun 15, 1999.

The trial court never determined Beatrice's income from this annuity in lieu of maintenance yet asserted she is self supporting. The court cannot make assumptions. Beatrice was a homemaker, still unemployed, with no other pension plan, and gave all her premarital assets to the marriage; while she had a heart bypass, actuarially, at 64, she may outlive Edgar, who is 7.5 years older, and will have substantially less income as survivor.

Beatrice asks this Court to review the conflict between ERISA and this QDRO, to safeguard spousal interests in retirement funds in bifurcated divorces.

CONCLUSION

The court below has decided important questions of federal law in a way that conflict with relevant decisions of this Court.

In the Family Law fee petition, the court dismissed all evidence of contractual obligation, a right to expect value for value, denying Beatrice's constitutional defense, resulting in an unfair trial. It

was reversible error for the court to rule Johnson did not have to provide benefit to Beatrice to be awarded fees. This judgment must be overturned.

In entering the QDRO, the court not only eliminated all ERISA and IRC codes on spousal rights to retirement funds, ruling de novo the Codes did not apply after the bifurcated dissolution "as the parties were no longer spouses," but eliminated the very legal process it swore to uphold, including Beatrice's right to due process, to have time to respond in writing to a complex financial motion on a major asset, to be heard fully in an evidentiary hearing with expert witnesses.

As fundamental rights to due process were denied and federal codes were not followed, this QDRO must be overturned.

Accordingly, Beatrice prays that this Court will grant thus leave for writ of certiorari.

Respectfully submitted,

Beatrice Bennett

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Appendix 1.

In the Circuit Court of the Eighteenth Judicial Circuit,
DuPage County, Wheaton, Illinois

In re the Marriage of:	)
Edgar F. Bennett,	) No. 97 D 0589
Petitioner,	)
and	) Judge John T. Elsner
	)
Beatrice M. Bennett,	) Room 3004
Respondent.	)

QUALIFIED DOMESTIC RELATIONS ORDER

THIS MATTER COMING before the Court for entry of a Qualified Domestic Relations Order, the Court having entered a Judgment Order of Dissolution of Marriage pursuant to the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/602.1) (the Judgment) on July 17, 1998 which included certain provisions dealing with EDGAR F. BENNETT's interest in the Teachers Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF), the Court now orders the following as required to carry forth such provisions insofar as they relate to TIAA-CREF pursuant to and in accordance with Section 206(d)(3) of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and Section 414(p) of the Internal Revenue Code of 1986, as amended (the Code):

THE COURT FINDS AND IT IS HEREBY ORDERED AS FOLLOWS:

A. This QDRO applies to: Teachers Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF).

B. Required Information: That this Order expressly provides for the following:

1. EDGAR F. BENNETT, (herein Annuitant) is a participant, through his employment, in TIAA-CREF.
   His Address: 5750 Abby Drive, Apt. 4P, Lisle IL.
   His Social Security Number: 003-20-2924
   His Birth Date: 7-29-29
2. BEATRICE M. BENNETT (herein Alternate Payee)
   Her Address: 913 Clyde Drive, Downers Grove IL.
   Her Social Security Number: 336-28-1119
   Her Birth Date: 12-23-36
3. Both Annuitant and Alternate Payee shall have the duty to notify TIAA-CREF administrator or trustee in writing of any changes in his or her respective mailing address subsequent to this Order.
4. The amount of percentage of Annuitant's benefits payable to Alternate Payee and the manner in which such amount or percentage is to be determined are specified herein.
5. The number of payments, form of payments and the payment period as applicable are specified herein, including particulars as to the date, time and duration of benefit payments.
6. Each plan to which the within Order applies is specified.

C. In March 1, 1997, Annuitant had irrevocably elected the annuity income option for TIAA Contract No.IF58132-7 under the Joint-Life Two-Thirds Benefit to Survivor Option with a 20-year Guaranteed Period. This option provides for monthly payments for the life of Annuitant and Alternate Payee. Upon the death of either the Annuitant or Alternate Payee, payment will be reduced to 2/3rds of the full payment amount and shall continue for the life of the survivor. Payments are guaranteed for a minimum of 20 years. If Annuitant dies before the end of the guarantee period of Feb 1, 2017, his Designated Beneficiaries, enumerated in paragraph E below, shall receive his percentage of the reduced benefit due under the contract during the guarantee period. If Alternate Payee dies before the end of the guarantee period of Feb 1, 2017, her Designated Beneficiar(y/ies), as enumerated in paragraph D below, shall receive her percentage of the reduced benefit due under the contract during the guarantee period. Any changes in the Designated Beneficiar(y/ies) shall be made pursuant to an amended qualified domestic relations order.

D. Upon entry of the Qualified Domestic Relations order, Alternate Payee shall be entitled to receive 35.4564% as and for her share of the Immediate Annuity benefits to be paid to her during life of the parties under Immediate Annuity Contract No.IF58132-7. Should Alternate Payee survive the Annuitant, then the Alternate Payee would be entitled to 35.4564% of the Two-Thirds Benefit to Survivor Option death benefit available at that time.

Should Alternate Payee predecease the Annuitant, then payment of her benefits would be made to the Designated Beneficiar(y/ies) identified as follows:

Name(s): Estate of Beatrice Bennett
Address(es): 913 Clyde, Downers Grove IL 60516
Date(s) of Birth: (blank)
Social Security No.: (blank)

E. Upon entry of the Qualified Domestic Relations Order, Annuitant shall be entitled to receive 64.5436%(100%-35.4564%) as and for his share of the Immediate Annuity benefits to be paid to him during life of the parties under Immediate Annuity Contract No.IF58132-7. Should Annuitant survive the Alternate Payee, then Annuitant would be entitled to 64.5436% of the Two Thirds Benefit to Survivor Option death benefit available at that time. Should Annuitant predecease Alternate Payee, then payment of his benefits would be made to Designated Beneficiaries identified as follows:

Name(s):	Dave E. Bennett	Karen L. Bennett
Address:	5750 Abby Drive Apt 4F Lisle IL 60532	5750 Abby Drive Apt 4F Lisle IL 60532
Born:	6-15-72	12-23-76
SS No:	329-70-0599	329-70-0420

2. Annuitant began participating in TIAA-CREF on Nov 15, 1957.

3. Alternate Payee shall be assigned an amount equal to 50% of the community interest in Annuitant's account balance under TIAA-CREF which community interest shall be expressed by a fraction, the number (334) is number of months of the marriage during which Plan benefits were accrued by Annuitant prior to the Marital Dissolution Date and the denominator (471) is the total number of full months during which Annuitant earned benefit service in the Plan whereby benefits were accrued by Annuitant prior to the Marital Dissolution Date. Said interest can be expressed in the percentage interest of 35.2094%.

4. The Annuitant shall be assigned an amount equal to 100% of the non-marital interest and 50% of the community interest in Annuitant's account balance under TIAA-CREF which interest shall be expressed by 100% less Alternate Payee's interest, or (100%-35.4564%) 64.5436%.

G. TIAA-CREF has no objections to the division of benefit between the parties. However, TIAA-CREF is unwilling to issue any checks to any other payee during Annuitant's lifetime to effectuate this settlement, as it is concerned that doing so may be a violation of its obligations under the Annuity; specifically that doing so may constitute a violation of its obligation to keep the Annuitant from assigning his beneficial interest in the subject. Therefore the parties have asked this Court for a declaration that the settlement agreement between

the parties as to their respective rights under the Immediate Annuity Contract is fair and equitable under the Circumstances and that by issuing checks to the Alternate Payee, TIAA-CREF would not be violating its obligations to the parties.

H. Alternate Payee is entitled to benefits due under the subject annuity contract.

I. TIAA-CREF is hereby directed to issue checks to the Alternate Payee, if it receives the appropriate releases from the parties.

J. Nothing in this Order requires and this Order shall not be construed to require:
1. Any Plan to provide any type of form of benefit or any option not otherwise provided in the Plan.
2. TIAA-CREF to provide increased benefits over the benefits to which the Annuitant is entitled.
3. The payment of benefits to the Alternate Payee which are required to be paid to another under an Order previously determined to a Qualified Domestic Relations Order.

J. (sic) That the foregoing provisions shall qualify as a Qualified Domestic Relations order and whenever the provisions hereunder are inconsistent with the definition of a Qualified Domestic Relations Order as may be contained, from time to time, in the Internal Revenue Code of 1985, as amended, and/or the Employee Retirement Security Act of 1974, as amended, this order shall be amended, from time to time as may be necessary, to comply with the requirements for a Qualified Domestic Relations order. This court retains

jurisdiction only to establish or maintain this order as a Qualified Domestic Relations Order.

ENTER: /S/ John T. Elsner, Judge
DATED: June 15, 1999
Approved by:
Signature: /s/
Printed Name: James Leach
Title: Insurance Consultant
JOHN L. FAY AND ASSOCIATES
1112 S. Washington Street, Suit 216
Naperville, IL 60541
630/961-0060
DuPage County Attorney No. 25003
Filed: Sep 22, 2000

Appendix 2.

Nos. 2-99-831 & 2-99-898, cons.

IN THE APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

IRMO OF	) Appeal from Circuit
Edgar Bennett	) of DuPage County
Pet. Appellee	)
and	) No. 97-D-589
Beatrice Bennett	) Hon. John Elsner
Res. Appellant.	) Judge, Presiding

RULE 23 ORDER; THIS ORDER IS NOT PRECEDENTIAL AND IS NOT TO BE CITED

In this consolidated appeal, resp. Beatrice M. Bennett (Beatrice) challenges the validity and equity of a QDRO entered by the trial court. Further, Beatrice appealing pro se, contends that the trial court erred in awarding attorney fees to one of her former attorneys. We note that this cause of action has previously been
before this court, most recently in IRMO Bennett, 306 Ill.App.3d 246 (1999)

We will initially address Beatrice's argument regarding the impropriety of the QDRO. The record contains the following relevant facts. Edgar and Beatrice were married on Aug 26, 1970. Judgement for dissolution of marriage was entered on Jul 17, 1998. Therein, it was ordered that Edgar's pension benefits were to be divided equally between the parties pursuant to the formula promulgated IRMO Hunt,78 Ill.App.3d 653 (1979). On Jul 17 1998, the trial court entered a separate order which stated in pertinent part that, when the QDRO was entered, the

parties shall review the amount paid by [Edgar] pursuant to this order and proper adjustments, if any, shall be made." At the Mar 31 1999 hearing at which Beatrice appeared pro se, the trial court entered an order that directed the parties "to prepare draft QDROs, submit them for approval to the plan administrator or appropriate person or trustee with a request for a written indication for approval or modifications in writing." Further, the order stated that the case was continued for status until Apr 28, 1999, at which time the parties were ordered to bring "copies of form QDROs, cover letters to the plan administrator, and any response letters from the plan administrator regarding approval or comments to the draft QDROs." On Jun 9, 1999, Edgar filed a motion for entry of a QDRO. A hearing on the motion was held Jun 15, 1999.

"At the hearing, Beatrice again appeared pro se. She objected to entry of the QDRO proposed by Edgar. During the hearing, the following colloquy took place:
"Ct: This comes up on a dispute as to the QDRO?
"Bauer (Ed's atty.): Yes, your honor.
"Bea: It is not a dispute at this point. I received (the proposed QDRO) on Jun 10. Ms. Bauer has written a motion; I read it over. I'd like to respond in writing.
"Bauer: My only concern here, your Honor, the judgment was entered almost a year ago. Mrs. Bennett had requested that she prepare the QDRO. Nothing was done on the QDRO. My client can suffer severe penalties and prejudice if this QDRO isn't entered quickly. And just--and just to explain, [if] this QDRO is not entered before one of the

party's death, it cannot be entered after the party's death. And what can end up happening is if Mr. Bennett passes away, his interest in this annuity will go to Mrs. Bennett and will not go to anyone he's designated as beneficiary.

*** [W]e've had statuses on the QDRO since Feb or Mar of this year.

"I have a QDRO that's been approved by the plan administrator. ***Mrs. Bennett and I spoke briefly before court this afternoon and I really don't think we're going to come to an agreement. There is a disagreement on the calculation of the percentage interest which is going to have to be resolved by your Honor."

The parties and court then discussed the calculation of the percentage interest, with the trial court concluding that the QDROs calculation of Beatrice's interest in the annuity was correct. Subsequently, Beatrice and the court engaged in the following colloquy:

"Mrs B: Sir, before we go into this, I would like to answer [the motion for entry of QDRO]. I just received it and *** when I spoke to TIAA (retirement fund) they did not say that [the QDRO] was ready for signature. They had several questions on it, and [Mr. Bauer] implied that I volunteered to do the QDRO. This is not true.

"Ct: Ma'am--

"Mrs. B: Judge Riggs assigned me to do it.

"Ct: Given the history of this litigation, I can be assured that you did not volunteer."

* * *

"Ct: [A]nd I do remember that *** you had notice and that the litigation has to terminate at one point. The best manner in which we can proceed today is to enter the QDRO; if you have a dispute with that, you can move the court to reconsider its order of today within 30 days. But we're not going to keep continuing
these hearings.

"Mrs. B: I will object. I find that if I receive something on [Jun] 10th and its up for hearing without a written response, that I am being unduly pressured to go forward on a major, major asset. ***

"Ct: And I've reviewed the QDRO that was submitted. The question that you raised was one of determination of month and years. It meets with the formula approved by the Appellate Court and it is going to be entered. ***

"Mrs. B: I certainly object your Honor. *** I find this all very premature and I - I certainly again say I object.*** I believe procedure [sic] require that I have time to respond to any motion *** that I receive. I received this motion on *** Jun 10. Today is Jun 15. ** Most people get 21 days to respond to any pleading.

the 2/3rds Joint-Life payout which Edgar opted for when he initiated this, it means that the payout will be reduced on his death. So instead of getting $1800/month, my life income will be $1200/month.* So I will have no - I will have less money as I get older. I am now 62. I have had quadruple heart bypass. My health is not good. And for me to face a future without maintenance and without adequate funds from this *** marital asset, I believe is a disservice. I will not have enough income to live on."

[*Note: Her impromptu illustration was wrong; if she out lives Edgar, as survivor she will not get 100% but 33.4565% of the 2/3rd survivor benefit.]

"Ct: The QDRO. Ms. Bennett will elect a beneficiary within 14 days."

Beatrice did not file a motion to reconsider this ruling.

Before we address the arguments raised here by defendant, we note that Edgar has not filed a brief in this portion of the consolidated appeal. We elect to reach the merits of this appeal under the principles enunciated in lst Capitol Mortgage Corp v. Talandis Construction Co, 63 Ill.2d 128, (1976).

Beatrice's first argument is that the QDRO entered by the trial court is ambiguous and unenforceable before paragraphs C & E of it are "repugnant and in conflict." However, this issue was not specifically raised in the trial court.

While Beatrice objected to the "prematurity" of entering the QDRO on Jun 15, she did not argue that C & E were in conflict. Rather, her lone contention at the hearing was that the calculation of her interest in the subject annuity was incorrect. Further, despite being told by the trial court on Jun 15 that she could raise arguments against the QDRO in a motion for reconsideration, Beatrice did not file a motion to reconsider. Thus, the trial court did not have opportunity to address any arguments related to the alleged conflicts between C & E. Issues not raised in the trial court may not be raised for the first time on appeal. Bd. of Education v Bd. of Education, 288 Ill.App.3d 382, 385 (1997).

Accordingly, we find that Beatrice has waived this argument.

Next, (she) argues the trial court abused its discretion in entering a final order on Jun 15, 1999. She maintains the QDRO was entered without an evidentiary hearing and was wholly the product of opposing counsel. This argument ignores first the fact that the formula for the order was determined after the trial

court heard evidence and second that Beatrice had the opportunity to be fully involved in the process of creating a suitable QDRO in the year following the entry of the DOM judgment. Though she was entitled to do so, Beatrice, for whatever reason, never submitted a draft QDRO of her own. Also, she did not indicate at the Jun 15 hearing that she had expert testimony to offer in response to the QDRO put forward by Edgar; nor did she file a motion to reconsider, wherein she could have at the very least alluded to evidence that might have undercut the propriety of the QDRO or directed a

request for adjustments pursuant to the supplemental order entered Jul 18, 1998. Essentially, Beatrice did nothing regarding the QDRO when she had the time to do so.

As the court indicated to her, the litigation had to terminate at some point. We find no abuse of discretion in the entry of the final order on Jun 15.

In what appears to be a variation on previous argument, Beatrice further maintains she was denied due process in the entry of the Jun 15 order. She contends that she was denied the opportunity to make meaningful objections to the entry of the QDRO. The standard of review for determining if constitutional rights have been violated is *de novo*. Patel v Ill. Medical Society, 298 Ill. App.3d 356, 370 (1998) Again, we conclude Beatrice was not denied opportunity to make meaningful objections to the QDRO. As noted above, she had the opportunity to argue that the calculation of her interest in the annuity was incorrect. Moreover, (her) citation to Patel is not persuasive.

In Patel, the case was dismissed "essentially *sua sponte*" by the court during pretrial conference, the Patel court stated:

"Further, plaintiffs' counsel was not given an adequate opportunity to respond to the [injunction] motion. He had no chance to respond in writing, and his opportunity to respond orally was scant at best. As noted above, the court twice interrupted counsel, then cut him off entirely and dismissed the case with prejudice, after having explicitly stated that plaintiffs would have opportunity to respond in writing to the injunction motion and stating that it would hear argument only on the TRO to which allowed defendant to convert its petition. Although

due process is a flexible concept, it is well established that at its heart is the 'fundamental requirement' of an 'opportunity to be heard at meaningful time and in a meaningful manner.' Plaintiffs would not appear to have received such an opportunity." Patel, 298 Ill.App.3d at 370.

The facts of the instant case bear little resemblance to Patel, wherein the court appeared bent on curtailing plaintiff's opportunity for argument and dismissing the complaint. Here, Beatrice was given a full opportunity to address the issue relating to the formula in the QDRO and to orally argue the impropriety of the QDRO. Also, unlike Patel, the trial court did not interrupt Beatrice as she made her argument. Moreover, as noted above, Beatrice had the opportunity to be completely involved in the writing of the QDRO, but made no effort to take part in its creation. We can see no violation of her due process rights in this matter.

Next, Beatrice argues that the trial court manifested bias against her during the Jun 15 hearing. Beatrice contends that a review of the colloquy between the court and her shows that *inter alia* the court made distasteful comments about her; ignored her "profuse objections," and failed to conduct an orderly proceeding or evidentiary hearing, prior to the entry of the QDRO order.

After reviewing the transcript of the Jun 15 hearing, we find no manifestations of bias against her. Admittedly, there was circumstances at bar. The parties' marriage ended approximately a year before the QDRO order and included a change in Edgar's beneficiaries, which was entered. By that time, Beatrice was no longer Edgar's spouse and thus

under the terms of the Code, he did not need Beatrice's consent to change his beneficiary.

For reasons stated above, we find the court properly entered the *** QDRO.

Next, Beatrice, appealing pro se, takes issue with the award of attorney fees to Randy Johnson, who represented her during a portion of the previous proceedings. She maintains that the trial court erred in failing to consider 508 requirements and contractual obligations when awarding fees pursuant to 508(c) of the Marriage & Dissolution of Marriage Act. [750 ILCS 5/508(c) (West 1996)] Specifically, she indicates that the time records produced at trial were "reconstructed" and that Johnson did not maintain proper time records. Further, she appears to argue that she did not receive quarterly statements detailing Johnson's fees. Additionally, Beatrice argues that the trial court's interpretation of 508(c) prevented her from putting forth a defense that was based on allegedly inadequate representation by Johnson. In response, Johnson maintains that she received a fair trial and that the trial court did not abuse its discretion in awarding him $16,514.10 in fees (Note: over the retainer amount).

We first address Johnson's argument that Beatrice's failure to return all trial exhibits that were in the record amounts to failure to provide a complete record. Accordingly, he maintains that the trial court's judgment should be affirmed on that basis. [see e.g. Belfour v Schaumburg Auto, 306 Ill.App 234, 244 (1999)

We do not agree with this contention. The missing exhibits which might be slightly helpful in

determining the issue of attorney fees are not essential elements of the case.

[Note: Johnson waived this issue earlier and admitted he had the entire Appellate record.]

Initially, we note that the award of attorney fees is a matter within the sound discretion of the trial court, and its determination will not be disturbed absent an abuse of that discretion. IRMO Takata, 304 Ill.App. 3d 85, 98 (1999). The Act reads in pertinent part:

> "The court shall first consider the written engagement agreement and, if the court finds that the former client and filing counsel, pursuant to their written engagement agreement, entered into a contract which meets applicable requirements of court rules and addresses all material terms, then the contract shall be enforced in accordance with its terms subject to further requirements of 5/508(c)(3). Before ordering enforcement, however, the court shall consider the performance pursuant to the contract. Any amount awarded by the court must be found to be fair compensation for the services, pursuant to the contract, that the court finds were reasonable and necessary." 750 ILCS 5/508(c)(3)

Our reading of the record indicates that the parties signed a contract on Aug 8, 1998, that met applicable court rules.

Additionally, it appears that during the 5.5 months Johnson represented Beatrice, she received quarterly accountings of Johnson's fees. Beatrice admitted she received a quarterly accounting on Nov 1998 and, as Johnson points out, he was dismissed at the end of Jan 1999, at which time it

appears that she would have received another quarterly accounting if the attorney-client [sic] had still existed. Further, time sheets introduced at trial did not appear to be reconstructed, as Beatrice maintains, but rather the result of routine business practices at Johnson's law firm. Finally, Beatrice's contention that she was unable to present a defense based on the inadequacy of Johnson's representation of her is not persuasive. In this context, such a defense was unavailing. There is no indication from the record that (she) received inadequate representation.

As a result, we find no abuse of discretion in the award of attorney fees.

For the reasons stated above, we find no abuse of discretion in the entry of the QDRO or the award of attorney fees and, accordingly, affirm the judgment of the circuit court of DuPage County. Affirmed: GALASSO, J., with INGLIS and GEIGER, JJ concurring.

Appendix 3.

Second District,
Office of the Clerk 847/695-3750
847/695-0092 TDD
Appellate Court Building
Elgin, Ill. 60120-5558
Appeal from the Circuit Court of County of DuPage
Trial Court No. 97 D 589
THE COURT HAS THIS DAY, 10/27/00, ENTERED THE FOLLOWING ORDER IN THE CASE OF:

Gen. No. 2-99-0831
Cons. Cases: 2-99-0898
IRMO: Bennett, Beatrice M. & Edgar

Upon consideration of the Petition for Rehearing filed by appellant, the Petition for Rehearing is hereby denied.

(Galasso, Inglis, Geiger, JJ.)
LOREN J. STROTZ, Clerk

Appendix 4.

State of Illinois, Supreme Court At the Term of the Supreme Court, begun and held in Springfield on Monday, the 8th Day of Jan 2001.

Present:

Moses W. Harrison, II, Chief J

J. Benj. K. Miller J. Mary Ann McMorrow

J. Robt Thomas J. Chas. Freeman

J. Thomas Fitzgerald J. Thomas Kilbride

On the 29th day of Jan 2001, the Supreme Court entered the following judgment:

No. 90605

Edgar B. Bennett, Respondent	Petition for Leave to Appeal from Appellate Court,
v.	Second District 2-99-0831
Beatrice M. Bennett, Petitioner.	2-99-0898 97 D 589

The court having considered the Petition for leave to appeal and being fully advised of the premises, the Petition for leave to appeal is DENIED.

As Clerk of the Supreme Court of the State of Illinois and keeper of records, files and Seal thereof, I certify that the foregoing is a true copy of the final order entered in this case.

IN WITNESS WHEREOF, I hereunto subscribed my name and affixed the Seal of said Court, this twentieth day of February 2001.

/s/ Juleann Hornyak, Clerk

Supreme Court of State of Illinois

Appendix 5.
Trial Transcripts

1. QDRO, [see Transcript, Jun 15, 1999, pp.8-9]

"Beatrice: Edgar initiated payout without my signature under ERISA, ERISA demands that the person who initiates it must make a provision for beneficiary for the second (annuitant) and when Edgar initiated it before he filed this divorce, he made a provision that I would be beneficiary. For him now to turn around and negate that authorization is wrong, because it undoes the intent with which he obtained these funds back in Feb 1997.

"The Court: Ma'am, he's free to change the beneficiary and he did go through a divorce."

2. CONTRACTUAL OBLIGATION, [See Transcript, Jun 2, 1999]

Beatrice fired her attorney on Jan 27, 1998, "in the firm belief that Randy Johnson has used fraud and concealment to cause irreparable harm to both my circuit and appellate court cases. I believe that Randy Johnson has acted intentionally to deceive me on material facts when, as my counsel, he had the duty and opportunity to speak. I do not trust him." [c.928]

During the fee petition hearing, the court stated "this is not a Common Law lawsuit on fees, but (a suit) on attorney fees under the IMDA (Illinois Marriage and Dissolution Act).

"We are not applying the English rule where you had to receive a benefit;" "defenses you have to

common law action are not necessarily defenses to the statutory petition for fees."

"The only thing that is at issue are fees listed by the attorney and if that work was necessary and those fees reasonable for that work."

"any arguments or statements based upon a breach of contractual relationship either by Mr. Johnson or Ms. Bennett are not relevant to this cause of action."

When Beatrice objected to a contract that includes something that is not enforceable, the court stated "That is for another court to determine in another case. This is not a contractual case."

"Whether you two had a valid contract is not at issue; whether you breached a contract is not at issue; what is at issue is the legislative enactment allowing for collection of attorney fees in divorce cases. The Court will hear argument on the reasonableness of fees, but not the benefit of his work. (It will) hear whether or not the rate charged by the attorney is reasonable in light of this legal community; whether the work set forth in the petition was performed; whether the work was necessary and reasonable."

"Bea asked how anyone can argue necessity without benefit.

Her closing argument attempted to bring up major breaches by Johnson, such as not telling her of a settlement offer; eliminating 95% of the issues they had agreed to appeal, including that in this trial, bifurcated without notice, the judge didn't call her to testify."

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